

DOCUMENT RESUME

02905 - [A2013082]

[Remedy for Civilian Employees Detailed to Military Positions].
B-183086. July 12, 1977. 2 pp.

Decision re: Defense Communications Agency; by Paul G. Dembling
(for Elmer B. Staats, Comptroller General).

Issue Area: Personnel Management and Compensation: Compensation
(305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel
Management (805).

Authority: 55 Comp. Gen. 539. B-183086 (1977). B-187287 (1977).
5 C.F.R. 511. CSC Bulletin 300-40, para. 4.

Agency requested decision on whether civilian employees detailed to higher grade military personnel positions for extended periods would be entitled to retroactive temporary promotions and backpay. Because these employees could not have been temporarily promoted into military personnel positions, they were ineligible for both retroactive temporary promotions and backpay. Their recourse was classification appeal during tenure at higher grade. (Author/DJM)

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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

Civ Per.
Lupton

FILE: B-183086

DATE: July 12, 1977

MATTER OF: Defense Communications Agency - Remedy
for Civilian Employees Detailed to Military
Positions

DIGEST: Defense Communications Agency requests decision whether civilian employees detailed to higher grade military personnel positions for extended period would be entitled to retroactive temporary promotions and backpay under our Turner-Caldwell decision, 55 Comp. Gen. 539 (1975), affirmed by B-183086, March 23, 1977, 56 Comp. Gen. _____. Because these employees could not have been temporarily promoted into the military personnel positions, there would be no basis for backpay. Thus, they may not receive retroactive temporary promotions. Available remedy for this situation is classification appeal during pendency of detail.

This action involves a request for an advance decision from the Defense Communications Agency (DCA) as to whether a retroactive temporary promotion authorized by our Turner-Caldwell decision, 55 Comp. Gen. 539 (1975), and our Reconsideration of Turner-Caldwell decision, B-183086, March 23, 1977, 56 Comp. Gen. _____, may be granted to a civilian employee detailed to a military position that would be for that employee a higher grade position under the civilian grade/military rank equivalency criterion employed by the Department of Defense. The DCA currently has two claims under consideration that involve the detail of civilian General Schedule employees to positions allocated, graded and assigned for military personnel incumbency.

Our Turner-Caldwell line of decisions held that employees detailed to higher grade positions for more than 120 days, without Civil Service Commission (CSC) approval, are entitled to retroactive temporary promotions with backpay for the period beginning with the 121st day of the detail until the detail is terminated. The rationale of those decisions was that an agency has no discretion to continue employee details beyond 120 days without CSC's approval. When an agency continues a detail without authority, corrective action in the form of a retroactive temporary promotion with backpay is required as of the 121st day of the detail, for the employee, provided the employee was otherwise qualified and could have been temporarily promoted into the position at that time.

B-183086

The Commission has promulgated implementing guidance for our Turner-Caldwell line of decisions in CSC Bulletin No. 300-40 dated May 25, 1977, subject: GAO Decision Awarding Backpay for Retroactive Temporary Promotions of Employees on Overlong Details to Higher Graded Jobs (B-183086). Paragraph 4 of CSC Bulletin No. 300-40 is relevant to the issue before us and provides in part as follows:

"* * * For purposes of this decision, the position must be an established one, classified under an occupational standard to a grade or pay level. As the decision notes, the Supreme Court recently ruled in United States v. Testan that classification actions upgrading a position may not be made retroactive so as to entitle an incumbent to backpay. Care must be taken to distinguish between employee claims based on details to higher graded positions, and to claims based on a classification action; only the former may be considered for retroactive correction under the decision." (Emphasis in the original.)

Since the DCA employees could not have been temporarily promoted to the military positions to which they were temporarily assigned, corrective action under our Turner-Caldwell line of decisions would not be applicable. The remedy which was available to these employees while they were serving in these higher grade military positions was a position classification appeal under procedures outlined in 5 C.F.R. Part 511. See Matter of Hubert J. Buteau - Claim for backpay for detail, B-187287, May 13, 1977. That remedy, however, is only available while the employee is performing the higher level duties and may not be applied on a retroactive basis.

Accordingly, employees temporarily assigned to higher grade military positions may not be given retroactive temporary promotions to the equivalent civilian grade.


For the Comptroller General
of the United States